



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490



Docket No. 11395-24
Ref: Signature Date



Dear Petitioner:

This is in reference to your reconsideration request for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 February 2025. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, applicable statutes, regulations, and policies.

A review of your record shows you enlisted in the United States Naval Reserve and served on active duty from 31 March 1976 to 7 January 1979 and 18 June 1979 until 31 August 1979. You were commissioned an Ensign on 30 May 1980 and commenced another period of active duty. Starting in May 1981, you were placed on limited duty for degenerative disc disease. Eventually, the Central Physical Evaluation Board (PEB) reviewed your case and found you unfit for service. On 31 August 1984, you were honorably discharged from the Navy due to a disability warranting severance pay at the rank of Lieutenant Junior Grade, O-2E.

For this petition, you contend you received ineffective assistance of counsel during your physical evaluation board process which resulted in an incomplete medical evaluation of your unfitting conditions. You argue that your unfitting conditions warranted a rating of 60% at the time of discharge.

Upon review, the Board disagreed with your rationale for relief. First, the Board noted you listed several conditions that were not referred to the PEB. In order for a condition to be considered unfitting, a service member must be unable to perform the duties of his/her office, grade, rank or

rating as a result of a qualifying disability condition. In reviewing your record, the Board noted you may have conditions that are service connected by the Department of Veterans Affairs but eligibility for compensation and pension disability ratings by the VA is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. In addition, the Board noted you underwent a PEB, had the opportunity to present additional information to the PEB, and were assigned a disability rating based on the existing medical evidence. The fact you provided a medical opinion approximately 40 years after the PEB finding in your case was not persuasive evidence an error or injustice exists with your record. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. After reviewing your evidence, the Board determined it was insufficient to overcome the presumption in your case. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

3/18/2025

